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**IN THE UNITED STATES FEDERAL DISTRICT COURT FOR THE EASTERN
 DISTRICT OF WASHINGTON**

ALLEN M. WALL; AUBREY A. BOLDUC,)
individually; MICHELLE BOLDUC,)
individually, on behalf of the)
marital community)
of Aubrey and Michelle Bolduc;)
MONTE F. NELMS, individually;)
and DEBORAH NELMS, individually,)
on behalf of the marital community of)
Monte and Deborah Nelms;)
and ZEKE L. SIMMONS.)

Plaintiffs,

vs.

DELTA PETROLEUM)
CORPORATION; SIERRA)
ENGINEERING; DAVID DEANS,)
individually; LONNIE DROLLINGER,)
individually; and "JOHN DOE" ONE)
THROUGH FIVE,)

Defendants.

NO. CV-09-5027-FVS

**FIRST AMENDED
 COMPLAINT FOR
 PERSONAL INJURIES
 AND JURY DEMAND**

1 The plaintiffs, by and through their attorneys, The Spence Law Firm LLC by Kent
2
3 W. Spence and Grant H. Lawson and Walthew, Thompson, Kindred, Costello and
4 Winemiller, P.S. by Patrick C. Cook and Kathleen K. Kindred for the causes of action
5 against defendants hereby file their Amended Complaint, with written consent of the
6 parties according to F.R.C.P. 15(a)(2) and allege as follows:
7

8 **I. IDENTIFICATION OF THE PARTIES**

- 9 1) Plaintiff Allen M. Wall is domiciled in the State of Arkansas.
- 10 2) Plaintiff Aubrey A. Bolduc is domiciled in the Province of Alberta, Country
11 of Canada.
- 12 3) Plaintiff Michelle Bolduc is married to Aubrey A. Bolduc. She brings this
13 in her personal capacity and on behalf of the marital community of Michelle and Aubrey
14 A. Bolduc.
- 15 4) Plaintiff Monte F. Nelms is domiciled in the State of Wyoming.
- 16 5) Plaintiff Deborah Nelms is married to Monte F. Nelms. She brings this in
17 her personal capacity and on behalf of the marital community of Deborah and Monte F.
18 Nelms.
- 19 6) Plaintiff Zeke L. Simmons is domiciled in the State of Washington.
- 20 7) Defendant Delta Petroleum Corporation (hereinafter Defendant Delta) is a
21 Delaware corporation, registered to do business in the State of Washington and is actively
22 doing business in Washington.
- 23 8) Upon information and belief, at all times relevant to this matter, Defendant
24 Delta was the owner of the Washington State Oil and Gas Permit No. 532, to drill a gas
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1 well in Section 31, T6N, R22W W.M., Klickitat County, Washington (hereinafter referred
2 to as the "wellsite").
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4 9) Defendant Sierra Engineering (hereinafter Defendant Sierra) is a dba of
5 Jolley Castillo Drennon, Ltd., a Texas Limited Liability Partnership.
6

7 10) Upon information and belief, at all times relevant to this matter, Defendant
8 Sierra contracted with Defendant Delta to provide wellsite managers, or "company men,"
9 at the wellsite.

10 11) Defendant David Deans is an individual domiciled in the State of North
11 Carolina.
12

13 12) Upon information and belief, at all times material, David Deans was
14 employed by Defendant Sierra and was a wellsite manager, company man, and/or
15 supervisor at the wellsite.

16 13) Upon information and belief, at all times material, Defendant David Deans
17 was acting as an employee and/or agent of Defendant Delta.
18

19 14) Defendant Lonnie Drollinger is an individual domiciled in the State of
20 Alaska.
21

22 15) Upon information and belief, at all times material, Lonnie Drollinger was
23 employed by Defendant Sierra and was a wellsite manager, company man, and/or
24 supervisor at the wellsite.

25 16) Upon information and belief, at all times material, Defendant Lonnie
26 Drollinger was acting as an employee and/or agent of Defendant Delta.
27
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1 17) Defendants John Doe I-V, have been added to this complaint in the event
2
3 that during the discovery process it is determined that other defendants need to be added
4 herein, to reserve the right to add additional unknown defendants.

5 18) Plaintiffs Allen M. Wall, Monte F. Nelms and Zeke L. Simmons were
6 employed by DHS Drilling Company (hereinafter "DHS").
7

8 19) Upon information and belief, at all time material, Defendant Delta
9 contracted with DHS to provide the drilling rig, equipment and labor to perform an "air
10 drilling" procedure, for a 15,030 foot gas well at the wellsite.

11 20) At all times material, Plaintiff Aubrey A. Bolduc was employed by Air
12 Drilling Associates.
13

14 21) Upon information and belief, Defendant Delta contracted with Air Drilling
15 Associates to provide the air supply equipment for performing the air drilling procedure at
16 the wellsite.
17

18 22) On or about July 25, 2008, the Defendants, along with DHS and Air
19 Drilling Associates, and their respective employees, were engaged in drilling a gas well at
20 the wellsite.

21 23) At approximately 01:30 am on July 25, 2008, Plaintiffs were severely and
22 permanently injured after a large gas explosion occurred on the drilling rig.
23

24 24) This Complaint is brought against all employees and agents of each of the
25 Defendants involved in this incident and against the managerial agents and safety
26 personnel for the Defendants, as well as against all other managers and supervisors of the
27 Defendants who set policy or who played an active or passive role in the hiring, training,
28 and supervision of the employees of the Defendants. Each of the Defendants, as legal

1 entities such as corporations, LLP's and joint ventures, can only act through their
2 employees and agents. As the employer of those who set policy and play either an active
3 or passive role in the hiring, training, and supervision of the employees, these Defendants,
4 and each of them, are responsible for their tortuous acts and/or omissions wherein they
5 negligently failed to properly hire, train and supervise their employees, supervisors, and
6 managerial agents. The Defendants, and each of them, are liable for the acts and omissions
7 of their officers, employees, agents, managerial agents, safety personnel, and supervisors
8 who set policies and procedures, authorize the doing and manner of the acts in question,
9 and who ratified or approved the actions which were the direct and proximate cause of
10 Plaintiffs' tragic injuries.
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13
14 25) Each of the Defendants were required to meet and comply with all statutes,
15 rules, regulations, policies, and procedures required by the United States Federal
16 Government and the State of Washington, as well as by the various regulatory agencies of
17 each, that in any way pertain to the incident that is the subject matter of this complaint.
18

19 26) The Defendants, and each of them, either individually or pursuant to the
20 standard of vicarious liability, owed a duty to the Plaintiffs to exercise reasonable care and
21 safety.
22

23 27) The Defendants, and each of them, were responsible for the hiring,
24 supervision, training, assignment, and control of their own actions as well as the actions of
25 their employees.
26

27 28) As a direct and proximate cause and result of the acts and omissions of the
28 Defendants as alleged herein, the Plaintiffs suffered serious, severe and permanent injuries

1 for which the Defendants are responsible; said injuries are more particularly set forth
2 below in the section of this Complaint entitled "Damages."

3
4 **II. JURISDICTION AND VENUE**

5 29) Plaintiffs incorporate by reference all statements and allegations contained
6 in numbered paragraphs 1 through 28 herein.

7
8 30) Pursuant to 28 U.S.C. § 1332, complete diversity exists and the claims are
9 well in excess of \$75,000.00 and the Court has jurisdiction.

10 31) Venue is proper in this Court according to 28 U.S.C., Section 1391, as the
11 location of the events alleged in this complaint took place in Klickitat County,
12 Washington.

13
14 32) This Court has both personal and subject matter jurisdiction.

15 **III. FACTS COMMON TO ALL CAUSES OF ACTION**

16 33) Plaintiffs incorporate by reference all statements and allegations contained
17 in numbered paragraphs 1 through 32 herein.

18
19 34) At all times material to this matter, Plaintiffs were working within the scope
20 of their employment.

21 35) At all times material to this matter, Defendant Delta was the operator,
22 wellsite owner and holder of permit No. 532, and a drilling operation was being performed
23 on the DHS Drilling Rig # 109.

24
25 36) Upon information and belief, on or about July 25, 2008, all parties were in
26 engaged in a procedure known as "air-drilling" at the Delta wellsite.
27
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1 37) Upon information and belief, Defendants Delta and David Deans, had no
2 previous experience with air drilling, or the proper air drilling procedure, method and
3 safety requirements.
4

5 38) Upon information and belief, Defendants David Deans and Lonnie
6 Drollinger, who were the "company men," or wellsite supervisors acting for Defendants
7 Delta and Sierra, had the ultimate authority over management of the operations on the rig.
8

9 39) Upon information and belief, Defendants David Deans and Lonnie
10 Drollinger, were responsible for all decisions on the rig, including all decisions prior to and
11 during the time of the explosion in this matter.
12

13 40) Upon information and belief, Defendants David Deans and Lonnie
14 Drollinger, were inadequately trained, and unqualified to be a company men or wellsite
15 supervisors on July 25, 2008.
16

17 41) Upon information and belief, all Defendants did not employ or require gas
18 sensors to be utilized while drilling the well on July 25, 2008.
19

20 42) Upon information and belief, Defendants knowingly and willfully allowed
21 the drilling operation to occur without gas sensors, or without sufficient safety training and
22 knowledge of known danger associated with air drilling.
23

24 43) Upon information and belief, Defendants David Deans and Lonnie
25 Drollinger, as wellsite supervisors, company men, and ultimate safety officers of the
26 wellsite, decided not to require gas sensors, in complete disregard for the lives and safety
27 of all employees at the well site.
28

 44) Upon information and belief, Defendants installed, or caused to have
installed, gas sensors, after the explosion occurred, but before investigators from the

1 Washington Occupational Safety and Health Administration arrived to investigate the
2 explosion and the resulting injuries to the Plaintiffs.
3

4 45) Upon information and belief, Defendants knowingly allowed the air drilling
5 operation to occur without the proper two-inch suction device on the rotating head, which
6 is a standard industry protocol and was required to be hooked into the head of the well to
7 suction gas seeping out of the well head.
8

9 46) Upon information and belief, a series of three (3) "blow outs," or "kicks,"
10 occurred on July 25, 2008, prior to the explosion which seriously and permanently injured
11 Plaintiffs.
12

13 47) Upon information and belief, each blow out or kick, consisted of
14 pressurized gas, air, water, drilling fluids and/or other materials, which shot out of the drill
15 hole.
16

17 48) Upon information and belief, gas was released from the drill hole
18 throughout a series of events leading up to the explosion.
19

20 49) Upon information and belief, the gas releasing from the drill hole resulted in
21 the entire drilling rig area air space being filled with dangerous gas.
22

23 50) Upon information and belief, Defendant David Deans was sleeping in his
24 trailer during the first blow out or kick on July 25, 2008.
25

26 51) Upon information and belief, Defendant David Deans, who was in full and
27 total control of the drilling operation at that time, was awakened by DHS drilling crew
28 employees during the first blow out or kick and immediately went to the rig floor, where
he met with the DHS supervisor, Mike Pitts (hereinafter "DHS Supervisor") and other
DHS employees.

1 52) Upon information and belief, after the first blow out or kick, the DHS
2 Supervisor requested that Defendant David Deans allow him to "shut in the well" or shut
3 the blow out preventer (hereinafter the "BOP").
4

5 53) Upon information and belief, Defendant David Deans refused, and
6 instructed the DHS Supervisor not shut the BOP.
7

8 54) Upon information and belief, a second blow out or kick occurred several
9 minutes after the first blow out or kick, which released more gas, water, drilling fluids
10 and/or other liquids and materials.
11

12 55) Upon information and belief, the DHS Supervisor, once again requested to
13 shut in the well or shut the BOP, and Defendant David Deans refused to allow this.
14

15 56) Upon information and belief, a third blow out or kick occurred, minutes
16 after the second event.
17

18 57) Upon information and belief, the third blow out or kick, resulted in
19 pressurized gas, air, water and drilling fluids to shoot approximately 90 feet in the air from
20 the drill hole.
21

22 58) Upon information and belief, the DHS Supervisor, again requested that
23 Defendant David Deans allow him to shut in the well in or shut the BOP due to the
24 unreasonably dangerous threat of an explosion.
25

26 59) Upon information and belief, Defendant David Deans responded to the
27 DHS Supervisor's third request to shut in the well by stating that he would allow the BOP
28 to be shut.
29

30 60) Upon information and belief, the DHS Supervisor proceeded to walk over
31 to the BOP controls with the intention shutting the BOP.
32

1 61) Upon information and belief, as the DHS Supervisor was walking toward
2 the BOP controls, Defendant David Deans then instructed the DHS Supervisor not to shut
3 in the well.
4

5 62) As a result, the well was not shut in, and the dangerous gas continued to fill
6 the rig floor area.
7

8 63) Upon information and belief, Defendant David Deans, was notified of the
9 dangerous condition several times prior to the explosion, and refused to allow the DHS
10 Supervisor to shut in the well, or shut the BOP.
11

12 64) Upon information and belief, had the DHS Supervisor been allowed to shut
13 in the well or shut the BOP after any one of his requests, the explosion would not have
14 occurred and Plaintiffs' severe and life threatening injuries would have been prevented.
15

16 65) Defendants, in reckless disregard for the lives and safety of plaintiffs
17 pushed forward the drilling operation, despite inadequate safety equipment or proper
18 training.
19

20 66) Common industry practice, for all Defendants, is to provide training and
21 instruction on the proper use of the air drilling technique, including providing safety
22 personnel; shutting in the well or shutting the BOP after receiving a "kick" or spike of
23 unknown pressure coming out of the hole; providing gas sensors at all times during a
24 drilling operations; providing the necessary and required safety equipment in an "air
25 drilling" procedure.
26

27 67) Federal and Washington State regulations in place at the time of the
28 explosion required the Defendants to provide and utilize gas sensors, and adequate suction

1 equipment for the air drilling procedure, along with providing training for all employees
2 and adequate supervision on the wellsite.

3
4 68) Upon information and belief, Defendants contacted Pason Systems
5 Corporation to install the gas sensor equipment actions of installing gas sensor equipment
6 immediately after the explosion and prior to Washington OSHA investigators ("WISHA")
7 showing up on the scene for the investigation.
8

9 69) Defendants had an affirmative duty to provide safety to all employees
10 including the Plaintiffs on the drilling rig.

11 70) Defendant David Deans had a duty to ensure safety on the drilling platform,
12 to act as a competent, trained and experienced company man/supervisor; and to prevent the
13 explosion and Plaintiffs' subsequent injuries.
14

15 71) Defendant David Deans lacked adequate experience to qualify as a
16 company man for air-drilling procedures in industry practices.
17

18 72) Defendants had an affirmative duty to provide safety to all employees
19 including Plaintiffs on the drilling rig.

20 73) Defendants had a duty to ensure safety on the drilling platform and to
21 prevent Plaintiffs injuries.
22

23 74) Defendants failed in their duty to properly and safely oversee the entire
24 drilling operation, provide safety on the drilling platform, ensure compliance with state and
25 federal safety regulations and prevent the severe injuries to Plaintiffs.

26 75) Defendants Delta and Sierra failed in their duty to hire and employ an
27 experienced, trained, competent, knowledgeable and adequate company men or wellsite
28 supervisors at the wellsite.

77) No adequate training or prior instruction on the air drilling method was provided by Defendants to any employees at the wellsite, in spite of assuming this duty by fully controlling the well site.

78) Upon information and belief, Defendants conducted thorough training on the air drilling procedure and provided all necessary safety equipment, including gas sensors and the rotating head two-inch suction valve at the wellsite, immediately following the explosion, demonstrating that Defendants had both retained and exercised control over the safety aspects of the drilling operations and assumed affirmative safety duties over the drilling operation.

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80) Plaintiffs' injuries were proximately caused by the wrongful acts, recklessness, willfulness, negligence, reprehensible conduct and fault of all Defendants.

82) Defendants had a duty to provide and utilize gas sensors, which would have prevented the explosion from occurring.

1 83) Defendants had a duty to ensure that all proper drilling equipment was used
2
3 for an air drilling process, including but not limited to, a safety suction device, which
4 would have prevented the build up of dangerous gas on and around the rig floor area and
5 the subsequent explosion.

6 84) Defendants had a duty to provide an experienced, knowledgeable,
7
8 competent and adequately trained wellsite supervisor and company man, but failed to do
9 so.

10 85) Defendants had a duty to provide a wellsite supervisor or company man
11
12 who understood the risks involved with the "air drilling" procedure and the necessary
13 safety precautions that were needed to ensure Plaintiffs' safety.

14 86) Defendant David Deans, had a duty to shut in the well, or shut the BOP, at
15
16 the first sign of danger to the drilling rig employees and failed to do so.

17 87) Defendant David Deans wholly disregarded the signs of danger that would
18
19 have been obvious to any competent and properly trained company man or wellsite
20 supervisor, and his inaction wrongfully put at risk and ultimately caused the injuries to the
21 Plaintiffs at the wellsite.

22 88) Defendants actions fell well below the standard of care in the industry for
23
24 providing safety to Plaintiffs and all workers on the jobsite.

25 89) Defendant David Deans had a duty to close the BOP and shut in the well
26
27 after the first occurrence of a "blow out," approximately 20 minutes before the explosion
28 occurred.

 90) Defendant David Deans, who had the ultimately authority, and who directed
DHS supervisor Mike Pitts not to shut in the well or shut the BOP after several requests

1 during the events leading up to the explosion, acted recklessly and willfully in refusing to
2 allow the well to be shut in, which would have prevented this tragic event.

3
4 91) Defendants' conduct in discharging their duties fell extremely below the
5 accepted standard of care and caused the severe and permanent injuries to Plaintiffs.
6 Defendants acts and omissions breached duties owed to Plaintiffs resulting in negligence.
7

8 92) Defendants' negligence included, but was not limited to, the following:

- 9 a) Failure to provide a safe work environment;
- 10 b) Failure to provide and utilize safety equipment to provide a safe worksite
11 for all employees.
- 12 c) Failure to use and maintain equipment to allow safe operations by
13 contractors/subcontractors and all employees;
- 14 d) Failure to warn of dangers and hidden hazards located on the worksite;
- 15 e) Failure to initiate, employ and enforce safety procedures to ensure a safe
16 work environment;
- 17 f) Failure to conduct safety meetings;
- 18 g) Failure to ensure that adequate warnings were in place;
- 19 h) Failure to adequately train and supervise the employee(s) in the use and/or
20 proper use of safety equipment;
- 21 i) Failure to provide an adequately trained wellsite supervisor/company man;
- 22 j) Failure to develop safe work policies and procedures;
- 23 k) Failure to implement safe work procedures;
- 24 l) Failure to abide by state and federal rules and regulations that were in effect
25 and controlling at the time of this incident;
- 26 m) Failure to meet the standards of care requisite in the industry;
- 27 n) Failure to develop, utilize and enforce a program to protect individuals
28 working at their facilities from potentially hazardous conditions;

1 o) Failure to institute appropriate policies and procedures to avoid the
2 occurrences that resulted in the injuries to Plaintiffs;

3 p) Failure to act properly and promptly to protect the Plaintiffs when clear
4 signs of danger to the safety of all workers at the wellsite appeared.

5 93) As a direct and proximate cause of the negligence, recklessness, willfulness
6 and reprehensible conduct of the Defendants, Plaintiffs were critically, severely and
7 permanently injured.
8

9 94) As a result of the willful, wanton, reckless, reprehensible and negligent acts
10 and omissions of the Defendants, which led to Plaintiffs' injuries, Plaintiffs were
11 grievously damaged as more specifically detailed in the section of this Complaint
12 denominated "Damages."
13

14 95) The Doe Defendants (Does 1-5) are persons, firms, corporations or entities
15 that had duties to inspect and/or maintain the premises on which Plaintiff's were injured
16 and to warn of and eliminate dangerous conditions on the premises.
17

18 96) One or more of the Doe defendants breached one or more of the aforesaid
19 duties by failing to conduct adequate inspections and by failing to warn of and eliminate
20 dangerous conditions of the premises.
21

22 97) One or more of the breaches of duty by the Doe defendants was a proximate
23 cause of the injuries and damages to the Plaintiff's.
24

24 V. DAMAGES

25 98) Plaintiffs incorporate by reference all statements and allegations contained
26 in numbered paragraphs 1 through 97 herein.
27

28 99) As a direct and proximate cause and consequence of the willful, wanton,
reckless, reprehensible and negligent actions of Defendants, Plaintiffs, Allen M. Wall,

1 Aubrey A. Bolduc, Monte F. Nelms, and Zeke L. Simmons were severely and permanently
 2 injured.
 3

4 100) As a direct and proximate cause and consequence of the willful, wanton,
 5 reckless, reprehensible and negligent actions of Defendants, Plaintiffs, Allen M. Wall,
 6 Aubrey A. Bolduc, Monte F. Nelms and Zeke L. Simmons, were severely and permanently
 7 injured. Plaintiffs are entitled to the following past and future damages:
 8

- 9 (1) Economic Damages, including, but not limited to;
 10 (a) Medical expenses related to the injuries from the explosion;
 11 (b) Loss of income;
 12 (c) Loss of future earnings;
 13 (d) Loss of earning capacity;
 14 (e) Loss of employment;
 15 (f) Loss of business and employment opportunities
 16 (g) Cost of obtaining substitute domestic services

- 17 (2) Noneconomic Damages, including, but not limited to;
 18 (a) Pain and Suffering
 19 (b) Inconvenience
 20 (c) Mental Anguish
 21 (d) Disability
 22 (e) Disfigurement
 23 (f) Emotional Distress
 24 (g) Loss of Society and Companionship
 25 (h) Loss of Consortium
 26 (i) Injury to Reputation
 27 (j) Humiliation
 28 (k) Destruction of the parent-child relationship

- (3) Penalty and exemplary damages for violations of State and/or Federal law.

- (4) Any and all other costs of this action and such other damages as are fair and just.

101) As a direct and proximate result of one or more of the previously mentioned
 breaches of duty, plaintiff Michelle Bolduc has and will experience impairment of her
 spousal relationship with plaintiff, Aubrey A. Bolduc.

1
2 102) As a direct and proximate cause and consequent of the Defendants'
3 negligence, Michelle Bolduc, is entitled to the following past and future damages:

- 4 (1) Loss of care, comfort and society;
5 (2) Loss of love and affection;
6 (3) Loss of Emotional support;
7 (4) Loss of sexual relations;
8 (5) Loss of help, support and otherwise.

9
10 103) As a direct and proximate result of one or more of the previously mentioned
11 breaches of duty, plaintiff Deborah Nelms has and will experience impairment of her
12 spousal relationship with plaintiff, Monte F. Nelms.

13
14 104) As a direct and proximate cause and consequent of the Defendants'
15 negligence, Deborah Nelms, is entitled to the following past and future damages:

- 16 (1) Loss of care, comfort and society;
17 (2) Loss of love and affection;
18 (3) Loss of Emotional support;
19 (4) Loss of sexual relations;
20 (5) Loss of help, support and otherwise.

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24 **VI. AD DAMNUM**

25 WHEREFORE, Plaintiffs respectfully request for a judgment against the
26 Defendants, and each of them, in an amount supported by the allegations of this
27
28

1 Complaint, and to be proven at trial, and for such other and further relief as the Court
2
3 deems equitable and proper.

4 A JURY TRIAL IS DEMANDED.

5
6 DATED this, 3 day of June, 2009.
7

8
9 By 

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